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**Riazul Hasan Vs. Emperor**

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**SooperKanoon Citation** : sooperkanoon.com/463119

**Court** : Allahabad

**Decided On :** Jul-27-1909

**Reported in** : 4Ind.Cas.260

**Judge** : Richards, J.

**Appellant** : Riazul Hasan

**Respondent** : Emperor

**Judgement** :

**Richards, J.**

1. This is an application in Revision to set aside an order of the Munsif directing the prosecution of the applicant. The learned Munsif purports to act under Section 476 of the Code of Criminal Procedure. It is argued by the learned Counsel on behalf of the applicant that the proceedings under Section 476 were quite too late. The civil case, in the course of which the offence is alleged to have been committed, was decided on the 21st of December, 1908, and the prosecution was not directed until the 3rd of April, 1909. The learned Counsel contends that action under Section 476 must be taken during the course of the trial or immediately afterwards, and in support of his argument he has cited Bahimatulla Sahib v. Emperor 31 M. 140 (F.B.); 3 M.L.T. 79; 17 M.L.J. 584; 7 Cr. L.J.54 also Aiyakannu Pillai v. Emperor 32 M.49 F.B.; 19 M.L.J. 42; 4 M.L.T. 404; 1 Ind. Cas. 597; 9 Cr. L.J. 46. The Benches in these two cases were not quite unanimous, and the view

taken by the majority of their Lordships did not prevail in the Bombay High Court Two Judges of this Court seem to have been unable to agree with the decision of the majority of the Court in Madras. See Girwar Prasad v. King-Emperor 6 A.L.J. 392; 1 Ind. Cas. 306; 9 Cr. L.J. 219. It appears also to have been the practice in this Court to refuse applications to set aside orders under Section 476 on the mere ground that the order was not made during the course of the civil case or immediately afterwards. If this were the only ground on which the present order could be attacked, I would not think of setting it aside without sending the case before a larger Bench. It is, however, contended that the order under Section 476, though nominally made in the name of the Munsif, was in truth an I in fact the order of the District Judge. It is quite clear that the District Judge had no jurisdiction to order the prosecution of Riazul Hasan,under Section 476. The offence was not committed before him nor did it come to his notice in the course of a judicial proceeding. The learned Munsif in his order refers in the most emphatic way to the fact that action by him, under Section 476, was at the suggestion of the District Judge. He further gives as a reason for making his order, knowledge and information which he imputes to the District Judge. All this appears on the face of the order of the Munsif In allowing the present application, I act entirely on the ground that the Munsif's order, on the face of it, does not appear to be an order made by himself on his own responsibility. Section 476 says, when any Civil, Criminal or Revenue Court is of opinion that there is ground etc.'--The Munsif was the Court in the present case, the order is nominally his, but the 'opinion' was the 'opinion' of the District Judge. I allow the application and set aside the order of the Munsif and all proceedings consequent thereon. But I make no order as to costs.

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